

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 10 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0135-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JUAN PIZARRO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2005101353001DT

Honorable Arthur T. Anderson, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Diane Meloche

Phoenix
Attorneys for Respondent

Juan Pizarro

Florence
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Juan Pizarro seeks review of the trial court's summary dismissal of his second notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.

We grant review and, for the following reasons, deny relief.

Background

¶2 Pursuant to a plea agreement, Juan Pizarro was convicted in 2006 of kidnapping and two counts of attempted sexual assault. The trial court sentenced him to an aggravated prison term of 17.5 years for the kidnapping conviction and placed him on lifetime probation for the sexual assaults. Pizarro filed a timely, of-right notice and petition for post-conviction relief challenging the aggravating factors found by the court at sentencing. The court denied relief in August 2007 and, according to the state, Pizarro did not seek review of that decision.

¶3 In May 2011, Pizarro filed this, his second notice of post-conviction relief, alleging his recent discovery of amendments to sentencing statutes and case law that had existed at the time he was sentenced gave rise to claims based on newly discovered evidence, pursuant to Rule 32.1(e), and a significant change in the law, pursuant to Rule 32.1(g). The trial court dismissed the notice, finding Pizarro had failed to state claims cognizable in an untimely Rule 32 proceeding. This petition for review followed.

¶4 On review, Pizarro argues the merits of claims he raised in his first and second post-conviction relief proceedings. Claims that were raised or could have been raised in Pizarro's first Rule 32 proceeding have been waived and are precluded. *See* Ariz. R. Crim. P. 32.2(a)(2),(3); *see also* Ariz. R. Crim. P. 32.9(c)(1) (failure to raise issue that could be raised in petition for review "shall constitute waiver of appellate review of that issue"). We therefore will not address Pizarro's arguments regarding claims raised in his first post-conviction proceeding.

¶5 With respect to claims asserted in Pizarro’s second notice of post-conviction relief, the trial court clearly identified and addressed each of those claims and correctly resolved them in a manner sufficient to permit this or any other court to conduct a meaningful review. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, no purpose would be served by repeating the court’s analysis here; instead, we adopt it. *See id.*

¶6 The trial court did not abuse its discretion in summarily dismissing Pizarro’s notice of post-conviction relief. *See* Ariz. R. Crim. P. 32.2(b) (untimely or successive notice that fails to state specific exception to preclusion or “meritorious reasons . . . substantiating the claim . . . shall be summarily dismissed”); *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary dismissal of Rule 32 proceeding reviewed for abuse of discretion). Thus, although we grant review, we deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge